

**MINUTES OF THE  
JUDICIARY INTERIM COMMITTEE**

Wednesday, May 16, 2012 – 9:00 a.m. – Room 25 House Building

**Members Present:**

Sen. Mark B. Madsen, Senate Chair  
Rep. Kay L. McIff, House Chair  
Sen. Lyle W. Hillyard  
Sen. Ross I. Romero  
Rep. Derek E. Brown  
Rep. LaVar Christensen  
Rep. Fred C. Cox  
Rep. Christopher N. Herrod  
Rep. Brian S. King  
Rep. V. Lowry Snow

Rep. R. Curt Webb  
Rep. Mark A. Wheatley

**Members Absent:**

Sen. Stephen H. Urquhart  
Rep. Paul Ray

**Staff Present:**

Mr. Jerry D. Howe, Policy Analyst  
Ms. Esther D. Chelsea-McCarty, Associate General Counsel  
Ms. Jennifer Christopherson, Legislative Secretary

**Note:** A list of others present, a copy of related materials, and an audio recording of the meeting can be found at [www.le.utah.gov](http://www.le.utah.gov).

**1. Committee Business**

Chair McIff called the meeting to order at 9:16 a.m.

**MOTION:** Rep. Brown moved to approve the minutes of the November 16, 2011 meeting. The motion passed unanimously with Sen. Hillyard and Rep. Webb absent for the vote.

**2. Open and Public Meeting Training**

Mr. Howe gave a summary of the "Open and Public Meetings Act," which was included in the mailing packet.

**3. Asset Protection Trusts**

Rep. Brown explained that the state of Utah loses business due to trust attorneys taking clients to other states where trust laws are more favorable. He proposed that the committee consider amending section 25-6-14 in a manner similar to 2012 General Session H.B. 490 "Asset Protection Trusts," which was included in the packet.

Mr. Robert S. Tippet, attorney, Bennett Tueller Johnson & Deere, said that people are not only concerned about business leaving Utah but also about business leaving the United States. He explained that Utah requires they have a trust company which is not attractive to individuals who then take their business to other states.

Mr. Brent Andrews, attorney, Kirton & McConkie, explained that many people are concerned about what assets are vulnerable in our society especially those in the medical field.

Mr. Tippet and Mr. Andrews responded to questions from the committee. Mr. Andrews stated that he does not know one Utah attorney who has used the Utah Asset Protection Trust. Mr. Tippet added that drastic changes need to be made to bring people back to Utah to shelter their assets.

Mr. Craig F. McCullough, attorney, Kirton & McConkie, said the purpose of asset protection is to protect up to 50% of a person's assets and also to allow a vehicle whereby one can give away some of their assets but that Utah's statute accomplishes neither of those.

The committee discussed different state statutes that provide asset protection trusts, considered changing Utah's statute to exclude some creditors from having access to certain trusts, and to remove the requirement that a Utah trustee be a trust company.

#### **4. Product Liability Amendments**

Rep. Brown led a discussion on 2012 General Session H.B. 413, "Product Liability Amendments," which was included in the mailing packet, and expressed the view that only the manufacturer of a product should be liable for that product. Committee discussion followed on whether the liability for a product should be limited to the manufacturer of the product.

#### **5. Offer of Judgment in Civil Cases**

This item was not discussed.

#### **6. Interim Study List – Committee Discussion**

The committee discussed the items on the Master Study Resolution, which was included in the mailing packet, and received committee members' input regarding the items to study during the 2012 Interim.

**MOTION:** Rep. Cox moved to add "alimony" as a study item for the 2012 Interim. The motion passed unanimously.

**MOTION:** Rep. Webb moved to add "enticing a minor" as a study item for the 2012 Interim. The motion passed unanimously.

Rep. Christensen explained the obligation of the committee to study the issues outlined in 2012 General Session H.B. 161 "Rights of Parents and Children." He said that the "Performance Audit of The Division of Child and Family Services," dated January 2011, shows that if family unification procedures are followed, the cost to the state is \$1,700 per child, whereas if the current procedures of the federal government are followed, the cost is \$47,000 per child.

**MOTION:** Rep. Herrod moved to add a study item for the 2012 Interim concerning whether someone who is underage, who gets convicted of underage drinking that has nothing to do with driving an automobile, should automatically lose their drivers license. The motion passed unanimously with Sen. Hillyard, Rep. Brown, and Rep. Webb absent for the vote.

#### **7. Other Business / Adjourn**

**MOTION:** Rep. Herrod moved to adjourn the meeting. The motion passed unanimously.

Chair McIff adjourned the meeting at 11:33 a.m.